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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,225	10/30/2003	Mary Elizabeth Davis	9396	9781
27752	7590	01/07/2009		
THE PROCTER & GAMBLE COMPANY			EXAMINER	
Global Legal Department - IP			CHAPMAN, GINGER T	
Sycamore Building - 4th Floor				
299 East Sixth Street			ART UNIT	
CINCINNATI, OH 45202			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/697,225

Applicant(s)

DAVIS ET AL.

Examiner

Ginger T. Chapman

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the claims

1. Claims 7-12 are pending in the application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 7 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of copending Application No. 11/281,791. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending ‘791 claim 1 is drawn to a diaper having a visible highlighting indicating the presence of a flow control layer being visible when viewing the body-facing surface and wherein the visible highlighting comprises an ink-printed pattern visible prior to wetting of the flow control layer. The instant claim 7 is drawn to a diaper having a visible highlighting indicating the presence of a wetness sensation

member being visible when viewing the body-facing surface and wherein the visible highlighting comprises an ink-printed pattern visible prior to wetting of the wetness sensation member. The flow control layer and the wetness sensation member are the identical member and perform the identical function, the only difference being in '791 it is named as "a flow control layer" and in the instant claims it is named a "wetness sensation member". The other components of the diaper recited in the claims are the topsheet, backsheet and absorbent, which are all well-known fundamental components of diapers and therefore obvious to include in a diaper.

4. Claim 5 of '791 is drawn to a plurality of flow control layers disposed parallel to and spaced apart from one another. The instant claim 8 is drawn to a plurality of flow control layers disposed parallel to and spaced apart from one another. As noted, the terms "flow control layer" and "wetness sensation member" both refer to the identical element using different terms.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

It is noted that the serial number of the copending application is 11/281,791 not 10/281,791; therefore the obviousness type-double patenting rejection of the claims over 11/281,791 is reinstated.

Response to Arguments

5. Applicant's arguments, see page 2 of 6, last paragraph, filed September 9, 2008, with respect to the rejection of independent claim 7 under 35 USC 102(b) as being anticipated by Inoue et al (US 6,630,069 B1), as not teaching the claim feature that the visible high-lighting

comprises an ink-printed pattern, have been fully considered and are persuasive. Applicant has only argued the limitations of independent claim 7; Applicant has not addressed the rejections of the dependent claims, therefore Applicant concedes that the rejections were proper. Therefore, the rejection has been withdrawn. However, upon further consideration, new grounds of rejection are made in view of Inoue '069 in view of Neading '513 and further in view of Lawrence et al (US 5,910,447).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo et al (US 6,146,367) in view of Neading et al (US 2001/0049513 A1) and further in view of Lawrence et al (US 5,910,447).

7. With respect to claim 7, Otsubo discloses a disposable absorbent article for wearing about a lower torso of a wearer and having a longitudinal axis, two laterally opposed article side edges extending between a laterally extending first waist end edge in a first waist region and a laterally extending second waist end edge in a second waist region, and a crotch region interposed therebetween (figs. 1 and 2), the disposable absorbent article comprising: a backsheet 22; a topsheet 21 joined to the backsheet 22 and having a body facing surface (fig. 2); at least one wetness sensation member 2 (c. 5, ll. 54-65) disposed upon the topsheet 21 in a face-to-face arrangement with the permeable body-facing layer 18 (figs. 3 and 4) and having two laterally opposed side edges (fig. 2), at least a portion of each of the two wetness

sensation member 2 side edges being disposed laterally inwardly of the article side edges (fig. 2); and a visible highlighting 31, 32 (c. 4, ll. 5-17 and c. 5, ll. 7-9), disclosed in the instant specification, at p. 10, ll. 4-6 and ll. 25-34 and p. 11, ll. 1-3, as a suitable embodiment of visible highlighting, indicating a presence of the wetness sensation member in the article and being visible at least when viewing the body-facing surface of the topsheet to facilitate an opportunity for urinary toilet training of the wearer (c. 6, ll. 12-15), wherein urine deposited by the wearer onto the wetness sensation member 2 can penetrate through the permeable body-facing layer in a z direction away from the wearer to an absorbent core (c. 4, ll. 50-51) and the wetness sensation member retards the passage of urine in the z direction and supports the movement of the urine in an x-y plane such that the wearer's awareness of urination is enhanced (c. 5, ll. 54-65).

8. Otsubo discloses the claimed invention except for expressly disclosing an absorbent core and that the visible highlighting comprises an ink-printed pattern. Neading teaches an absorbent core 20 and a visible highlighting 24 comprising an ink-printed pattern that is visible prior to wetting of a flow control layer 14; the permeable body-facing flow control layer 14 performs the substantially identical function of the instant claimed wetness sensation member [0024-5]. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the article of Otsubo as taught by Neading, since Neading states, at [0025-7], that the benefit of forming the article with this design is that it indicates and thereby creates an awareness that urination and soiling of the diaper has taken place.

9. The combination of Otsubo and Nearing disclose the claimed invention except for the appearance of the visible highlighting is substantially unchanged upon wetting to the wetness sensation member.

10. Lawrence et al, as best depicted in Figure 5a, teaches a visible highlighting 33, 34 for indicating a presence of a color change indicator 31, 32 in a disposable absorbent article 11. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the visible highlighting of Otsubo / Nearing as taught by Lawrence, since Lawrence states, at c. 12, ll. 30-35, that the benefit of forming a visible highlighting with this design is that it provides enhanced visibility to the user.

11. With respect to claim 8, Otsubo discloses the wetness sensation member 2, comprises sheet having a plurality of crests 31 disposed parallel to and spaced apart from the longitudinal axis and spaced apart 32 from one another, each crest 31 disposed upon the topsheet 21. Thus the configuration of crests of Otsubo performs in the substantially identical manner as a plurality of members in the same configuration.

12. With respect to claim 9, Otsubo discloses the claimed invention except for the spacing of the members ranging from about 5 mm to about 15 mm apart. Otsubo teaches the wetness sensation crests 31 in the crotch region are spaced apart in order to retain urine between each row of crests 31 and in the gaps 32 therebetween to hold the urine against the wearer's crotch to provide a sensation of wetness to alert the wearer that urination has occurred. Thus Otsubo provides motivation for spaced apart wetness sensation members. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the crests of Otsubo space about 5 to about 15 mm apart, since it

has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

13. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo in view of Neading / Lawrence and further in view of Roe et al (US 6,642,427 B2).

14. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

15. With respect to claims 10-12, the combination of Otsubo / Neading / Lawrence disclose the claimed invention except for the topsheet comprises two z-folds parallel to the longitudinal axis separated by a spacing ranging from about 50 to about 90 mm apart and each wetness sensation member disposed within the z-folds and further comprising two elastic members disposed along the two flow control members. As best depicted in Figures 8b and 10b, Roe discloses the claimed configuration. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wetness sensation members of Otsubo / Neading / Lawrence as taught by Roe, since Roe states, at c. 11, ll. 17-20, that the benefit of forming the members with this design is that the combination of the z-folded topsheet and elastic members maintains wetness sensation member in contact with the wearer's skin.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Roe et al: US 2002/0169427 A1; US 6,627,786 B2; US 2007/028971 A1, 11/724,713; 2006/0224132 A1, 11/098,362; 2006/0264858 A1, 11/133,973; 2008/0071239 A1, 11/522,668; 2007/0191797 A1, 11/351,745; 2007/0233026 A1, 11/724,838; Vargo: US 2008/0065034 A1, 11/703,393; Warner 2008/0195072 A1, 11/703,947.

18. Cammarota et al (US 6,307,119 B1); Allan et al (US 2003/0014025 A1); Roskin et al (US 5,823,953); Gael et al (US 6,203,496 B1); Everhart et al (US 5,468,236); Smith et al (US 6,126,597); Kritzman et al (US 6,627,394 B2); Glaug et al (US 5,797,892); Underhill (US 6,657,099 B1); Springer et al (US 6,617,488 B1); Larssonneur (US 5,522,809) fig. 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/
Examiner, Art Unit 3761
12/15/08

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761